

MICHAEL JOHNSON
Claimant

A-1 PLANK & SCAFFOLD MFG.
Respondent

TRAVELERS INSURANCE COMPANY
Insurance Carrier

Claimant, a welder for respondent, alleges accidental injury on September 26, 2001, when, as he was turning his neck, he felt a pop in the neck. His neck continued to hurt for several days. On October 10, 2001, claimant had a conversation with his supervisor, Jason Pfeifer, regarding his neck. The exact contents of that conversation are not clear in the record. Claimant alleges he advised his supervisor he had injured his neck and was going home early. Respondent's witness, Daryl Younger (the risk manager), testified that Mr. Pfeifer was aware claimant was having neck pain, but was not aware that it was related to his employment. The production notes for that night do indicate that claimant left early due to neck pain.

K.S.A. 44-520 requires that notice of an accidental injury be given to respondent within 10 days after the accident, stating the time and place and particulars of the accident. In this instance, the testimony is diametrical between claimant and respondent's risk manager, Mr. Younger, regarding what, if any, notice was provided on October 10, 2001. That date is significant because K.S.A. 44-520 allows 10 days' notice from the date of accident, not counting weekends and holidays. October 10, 2001, is the tenth day when considering a September 26, 2001 date of accident. Respondent's representatives acknowledge claimant advised them on October 11, 2001, of the work-related nature of his neck complaints, but dispute timely notice on October 10.

The Administrative Law Judge found, and the Board agrees, that respondent has not directly refuted claimant's testimony. The fact that claimant's supervisor, Mr. Pfeifer, was aware claimant had neck problems, coupled with the fact that it was entered into the production notes that claimant left early due to those neck problems, is sufficient for preliminary hearing purposes to satisfy the notice requirements of K.S.A. 44-520.

As is always the case, preliminary hearing findings are not binding in a full hearing on the claim, but are subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated March 14, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2002.

BOARD MEMBER

c: James A. Cline, Attorney for Claimant
William L. Townsley, III, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director